

REMARKS

Applicant has reviewed and considered the Office Action mailed on August 18, 2008 and the references cited therein.

Claims 18-20, 26, and 33-35 are amended and no claims are canceled or added. As a result, claims 1-4, 8, 12-13, 16-20, 22-23, and 26-37 are still pending in this application.

Claim Objection

Claim 26 was objected to based on an informality. Claim 26 has been amended herein in a manner that is believed to address the Examiner's concerns.

35 USC § 101 Rejection of the Claims

Claims 18-20 and 33-35 were rejected under 35 USC § 101 because the claimed invention was indicated to be directed to non-statutory subject matter.

The Applicants respectfully disagree with the Examiner's position regarding the statutory or non-statutory nature of the subject matter of the identified claims. However, in order to expedite prosecution, the preamble of claim 18 has been amended to remove reference to an "article." The dependent claims have been amended accordingly. It is believed that these amendments address the Examiner's concerns.

35 USC § 112 Rejection of the Claims

Claims 18-20 and 33-35 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

The Examiner takes the position that claim 18 is directed to both an apparatus (an access point) and instructions for using the apparatus. The Applicant respectfully disagrees. Claim 18 is not "directed" to an access point. The reference to an access point is merely a location limitation describing where the corresponding action is performed. That is, the action "determining whether a wireless client device having a low quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal" is performed "at

an access point in a wireless network ...". It is submitted that this language is not indefinite. The Applicant respectfully requests that this rejection be withdrawn.

35 USC § 103 Rejection of the Claims

Claims 1, 2, 4, 8, 12-13 and 16-20 were rejected under 35 USC § 103(a) as being unpatentable over *Chuah et al.* (U.S. Publication No. 2005/0059396 A1).

To support an obviousness rejection, the Examiner must show that "the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains." 35 U.S.C. § 103(a) [emphasis added]. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

"Office personnel fulfill the critical role of fact finder when resolving the *Graham* inquiries. ... Factual findings made by Office personnel are the necessary underpinnings to establish obviousness." MPEP 2141(II) [emphasis added]. The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385 (2007). In *KSR*, the Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether

the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983). MPEP 2141.02 (I) "All words in a claim must be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970).

Claim 1 is an independent claim directed to a method comprising: (a) at an access point in a wireless network that includes a first wireless transceiver following a first wireless standard and a second wireless transceiver following a second wireless standard to provide wireless network access for wireless client devices, determining whether a wireless client device having a low quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal; and (b) when a wireless client device having a low quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal, moving said wireless client device having a low quality signal to said second wireless transceiver.

Chuah is directed to a communication protocol between a gateway and an access point. As stated in the office action, Chuah teaches basic load balancing to relieve a transceiver from over usage (paragraph [0065] of Chuah). That is, Chuah teaches a gateway that rejects an open service access request from a new user if the requested transceiver is being over used (paragraph [0066] of Chuah). The rejection forces the LAN card of the mobile host to reassociate with a different transceiver in the access point (paragraph [0066] of Chuah). Chuah does not teach, nor does it suggest, "determining whether a wireless client device having a low quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal." Similarly, Chuah does not teach or suggest, "when a wireless client device having a low quality signal is sharing said first wireless transceiver with a wireless client device having a high quality signal, moving said wireless client device having a low quality signal to said second wireless transceiver." Chuah is simply rejecting an access request received from a mobile host when it is believed that granting the access will over burden the corresponding transceiver. There is no discussion about differences in the quality of the signal between different user devices or how this can be used to make a decision to have a device move to another transceiver. In addition, the technique discussed in Chuah is implemented at the time that a user device requests access.

The claimed method is not limited in this fashion and may be performed at any time. Thus, if a wireless device initially has a high quality signal and later develops a low quality signal while still associated with the same access point, the claimed technique can identify the situation and move the device accordingly. The teachings of Chuah do not allow this.

As stated above, to support an obvious rejection, the Examiner needs to ascertain the differences between the prior art and the claims at issue and then needs to show that “the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.” 35 U.S.C. § 103(a). The Examiner has not done this in the present office action. The Examiner does identify the differences between Chuah and the subject matter of claim 1 (i.e., Chuah fails to explicitly teach ...” from page 4 of the office action), but fails to provide articulated reasoning as to why the claimed subject matter “as a whole” would have been obvious. For example, the Examiner indicates that Chuah teaches basic load balancing and then concludes that it would have been obvious to determine whether a wireless client device having a low quality signal was sharing the first wireless transceiver with a wireless client device having a high quality signal and then moving the wireless client device having the low quality signal to the second wireless transceiver. However, the Examiner does not explain why a person of ordinary skill who wants to provide load balancing would go to the extra step of determining whether a device with a low quality signal was sharing a transceiver with a device having a high quality signal when traditional load balancing does not perform this action. Traditional load balancing merely makes sure that any one transceiver is not overloaded compared to other available transceivers, it does not make a distinction between devices based on quality of signal. The Examiner has failed to describe how this aspect of the claimed subject matter would have been obvious.

Based on the foregoing, it is submitted that the Examiner has failed to provide a prima facie case of unpatentability with regard to independent claim 1. It is further submitted that Chuah does not render obvious the subject matter of independent claim 1. Reconsideration and allowance of claim 1 is therefore respectfully requested. Similar arguments apply to independent claims 12 and 18.

Claims 2, 4 and 8, claim 13 and 16-17, and claims 19-20 are dependent claims that depend either directly or indirectly from independent claims 1, 12, and 18, respectively. Consequently, these claims are allowable for at least the same reasons as their corresponding base claims. These claims also provide further bases for patentability.

Claim 3 was rejected under 35 USC § 103(a) as being unpatentable over *Chuah et al.* (U.S. Publication No. 2005/0059396 A1) as applied to claim 1, and further in view of *Ganz et al.* (U.S. Patent No. 6,049,549).

Claim 3 is a dependent claim that depends directly from independent claim 1. Consequently, this claim is allowable for at least the same reasons as claim 1.

Claims 29, 32, and 35 were rejected under 35 USC § 103(a) as being unpatentable over *Chuah et al.* (U.S. Publication No. 2005/0059396 A1) as applied to claims 1, 12 and 18, and further in view of *Esteves et al.* (U.S. Patent No. 6,687,510).

Claims 29, 32, and 35 are dependent claims that depend directly from independent claims 1, 12, and 18, respectively. Consequently, these claims are allowable for at least the same reasons as their corresponding base claims.

Claims 27, 28, 30, 31, 33 and 34 were rejected under 35 USC § 103(a) as being unpatentable over *Chuah et al.* (U.S. Publication No. 2005/0059396 A1) as applied to claims 1, 12 and 18, and further in view of *Well Known Prior Art – Official Notice*.

Claims 27 and 28, claims 30 and 31, and claims 33 and 34 are dependent claims that depend directly from independent claims 1, 12, and 18, respectively. Consequently, these claims are allowable for at least the same reasons as their corresponding base claims. These claims also provide further bases for patentability. For example, claim 27 further defines the “first wireless standard” of claim 1 as being “a standard that achieves better throughput than said second wireless standard” and the “second wireless standard” of claim 1 as being “a standard that achieves better range than said first wireless standard.” It should be stressed that the obviousness analysis must consider the invention “as a whole.” [See 35 U.S.C. 103.] Neither Chuah nor the well known prior art teach or suggest switching a wireless device having a low quality signal to a wireless transceiver following a standard that achieves better range from a wireless transceiver that follows a standard that achieves better throughput when it is determined that the wireless device having a low quality signal is sharing the better throughput wireless transceiver with a

wireless device having a high quality signal. Claim 28 further defines the “first wireless standard” of claim 1 as being “IEEE 802.11a” and the “second wireless standard” of claim 1 as being “IEEE 802.11b,g.” Neither Chuah nor the well known prior art teach or suggest switching a wireless device having a low quality signal to a wireless transceiver following IEEE 802.11b,g from a wireless transceiver that follows IEEE 802.11a when it is determined that the wireless device having a low quality signal is sharing the IEEE 802.11a wireless transceiver with a wireless device having a high quality signal. Similar arguments apply to claims 30, 31, 33, and 34.

As stated in MPEP 2144.03, it is not appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. It is asserted that the facts noticed by the Examiner in the present rejection are not instantly and unquestionably demonstrable as being well known. The Applicants therefore traverse the Examiner’s findings based on official notice. It is respectfully requested that the Examiner provide documentary evidence of the noticed facts in the next official communication.

Claims 22, 23 and 26 were rejected under 35 USC § 103(a) as being unpatentable over *Chuah et al.* (U.S. Publication No. 2005/0059396 A1) and further in view of *Fox et al.* (U.S. Patent No. 6,879,807).

Fox was cited to show that dipole antennas coupled to wireless transceivers were known at the time of the invention. Claim 22 should be allowable for at least the same reasons as independent claim 12 discussed above.

Claims 23 and 26 are dependent claims that depend directly from independent claim 22. Consequently, these claims are allowable for at least the same reasons as their corresponding base claims.

Claims 36-37 were rejected under 35 USC § 103(a) as being unpatentable over *Chuah et al.* (U.S. Publication No. 2005/0059396 A1) and further in view of *Fox et al.* (U.S. Patent No. 6,879,807) as applied to claim 22, and further in view of *Well Known Prior Art – Official Notice*.

Claims 36 and 37 are dependent claims that depend directly from independent claim 22. Consequently, these claims are allowable for at least the same reasons as their corresponding base claims. These claims also provide independent bases for patentability for substantially the

same reasons discussed above with respect to claims 27 and 28. As described above, it is respectfully requested that the Examiner provide documentary evidence of the facts officially noticed.

The present office action relies upon at least one 35 USC § 102(a) or 35 USC § 102(e) reference. Please note that no part of the present response is to be deemed an admission that this (these) reference(s) is (are) valid prior art in the present application. As such, the Applicants reserve the right to swear behind this (these) reference(s) at a later date.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (480-948-3745) to facilitate prosecution of this application.

Respectfully submitted,

GREG A. PEEK

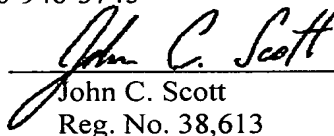
By his Representatives,

CUSTOMER NUMBER: 45643

480-948-3745

Date: November 18, 2008

By


John C. Scott
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 18th day of November, 2008.


Shellie Bailey